

I. INTRODUCTION

On April 2, 1993, the City of Springfield ("City") and the Western Massachusetts Electric Company ("WMECo") filed a joint petition with the Department of Public Utilities ("Department") for approval of a lease agreement by and between the City and WMECo relative to the Cobble Mountain Hydroelectric Facility ("Lease Agreement").

Department approval of the Lease Agreement would allow WMECo to use the fall of water on the Westfield Little River¹ and its tributaries, and the Cobble Mountain Hydroelectric Facility, for the generation of electricity.² The Cobble Mountain Hydroelectric Facility is owned by the City and has a nameplate capacity of 33 megawatts ("MW") (Exh. SP/WMECo-2, at 1, D.P.U.-14).

The City and WMECo ("Petitioners") seek approval of the Lease Agreement pursuant to Article XIV of said Lease Agreement. Such approval by the Department is required under the provisions of the

¹ The City erected a dam and reservoir on the Westfield Little River, known as the Cobble Mountain dam and reservoir, and an outlet tunnel and gates at the entrance thereto.

² The Cobble Mountain Hydroelectric Facility is comprised of trash racks, a surge tank, penstocks, a hydroelectric generating station, transformers, a switching station, transmission line and other associated equipment whereby the water in the Cobble Mountain reservoir is utilized for the generation and transmission of electricity (Exh. SP/WMECo-2, at 1).

Acts of 1928, c. 267, § 4, as amended by the Acts of 1982, c. 45 § 1, and the Acts of 1990, c. 197, § 1.³

On June 6, 1973, the Department approved a lease between the City and WMECo relative to the Cobble Mountain Hydroelectric Facility. Petition of City of Springfield and Western Massachusetts Electric Company for Approval of a Lease Between the Parties, D.P.U. 14267-A (1973) ("Springfield/WMECo-1973"). The 1973 lease, which was for a 20-year period, had a retroactive effective date of November 12, 1972 and a termination date of November 11, 1992. The Petitioners state that since November 12, 1992, WMECo has continued to operate the Cobble Mountain Hydroelectric Facility pursuant to an interim agreement which consists of the terms of the Lease Agreement (Exh. DPU-3). The Petitioners state that had not such an interim agreement been reached, the City's water needs would have been met by spilling water from the Cobble Mountain reservoir without going through the turbines, thus wasting the energy that was otherwise generated by the turbines (id.).

³ Hereinafter, reference to the Acts of 1928, c. 267, § 4, shall include all amendments.

WMECo is a company lawfully engaged and authorized to engage in the business of generating, transmitting, and selling electricity within the Commonwealth of Massachusetts (Exh. SP/WMECo-2, at 1).

II. PROCEDURAL HISTORY

On June 1, 1993, the Hearing Officer issued an Order of Notice and directed the Petitioners to publish said Notice. The Petitioners confirmed publication by filing a return of service with the Department on July 6, 1993. No petitions for leave to intervene were filed. The Hearing Officer entered nine exhibits into the record primarily consisting of responses to information requests.

On September 21, 1993, the Petitioners notified the Department that they waived any right to an evidentiary hearing and requested that the Department render a decision based on the written evidence submitted.

III. STANDARD OF REVIEW

In their petition for approval of the Lease Agreement relative to the Cobble Mountain Hydroelectric Facility, the Petitioners seek approval of said agreement under the Acts of 1928, c. 267, § 4 which, in pertinent part, provides:

If said city ... shall utilize the fall of the water on the Westfield Little River and its tributaries for the generation of electricity, said city ... may, subject to the approval of the department of public utilities, lease to any electric company lawfully engaged or

authorized to engage in the business of generating, transmitting or selling electricity in the commonwealth, for any period not in excess of thirty years ... the exclusive right to occupy, use and operate all or any part of the buildings, machinery, equipment and appurtenances erected or otherwise acquired by said city for the aforesaid purpose

The statute also states that the City may enter into such a lease provided that the City reserves the absolute prior right to withdraw and use water from the streams and reservoirs that are subject to the lease in order to meet the water needs and obligations of the City. Acts of 1928, c. 267, § 4. Further, in previous decisions relative to the Cobble Mountain Hydroelectric Facility, the Department considered whether the lease was mutually advantageous to the City and WMECo.

Springfield/WMECo-1973, at 3; Petition of City of Springfield and Western Massachusetts Electric Company for Approval of a Lease Between the Parties, D.P.U. 14267 (1963).

In addition, WMECo is subject to the Department's Integrated Resource Management ("IRM") regulations.⁴ These regulations, which govern the procedure by which additional resources are planned, solicited, and procured by investor-owned electric companies, require that electric companies conduct competitive solicitations to meet

⁴ The IRM regulations, 220 C.M.R. §§ 10.00 et seq., became effective on August 31, 1990. This is the first instance in which Department approval of this lease has been requested since the IRM regulations went into effect.

identified power supply needs.⁵ 220 C.M.R. § 10.01(1). However, the Department has recognized that under certain circumstances, resources may have to be procured outside of a prescribed IRM solicitation process. IRM Rulemaking, D.P.U. 89-239, at 47-48 (1990). The Department established that when electric companies seek approval of resources acquired outside of the IRM cycle, the petitioning electric company will bear the burden of demonstrating that the proposed resource acquisition could not take place within the solicitation structure, and that the proposed resource acquisition is in the best interest of ratepayers. Id.

IV. THE PETITIONERS' PROPOSAL

As proposed, the term of the Lease Agreement would be retroactive to November 12, 1992, and unless otherwise terminated under Article X of said Lease Agreement, would expire no later than November 11, 1995 (Exh. SP/WMECo-2, at 2). The Lease Agreement provides WMECo the right to occupy, use and operate the Cobble Mountain Hydroelectric Facility and the right to draw and use water from the Cobble Mountain reservoir (id. at 3). The Lease Agreement

⁵ The schedule as to when each electric company must submit its initial IRM filing is determined by the Department. 220 C.M.R. § 10.03(1). The IRM regulations prescribe that initial filings shall not be more frequent than 18 months, nor less than 30 months from the previous initial filing. Id.

also states that the right of WMECo to draw water is, inter alia, subject to a provision which gives the City the right at all times to draw from the storage reservoir in the valley of the Westfield Little River whatever quantities of water may be required for meeting the requirements and obligations of the City (id. at 4). In addition, the Lease Agreement requires WMECo to maintain a certain level of water in the intake reservoir (id. at 5).⁶ Should WMECo fail to maintain the requisite level of water in the intake reservoir, the Lease Agreement has provisions which will allow the City to take action to restore water in the intake reservoir to the appropriate levels (id.).

Further, the Lease Agreement provides that WMECo will pay the City for the energy produced from the Cobble Mountain Hydroelectric Facility (id. at 18). The Petitioners have presented a detailed formula for determining the payments that WMECo will make to the City based on factors such as (1) the facility's monthly energy production, (2) a negotiated payment term equal to 92.5 percent of the Company's peak and off-peak avoided cost energy rates applicable to small power

⁶ Specifically, the Lease Agreement states that WMECo shall not permit the level of water in the intake reservoir to fall below elevation 485 above the base (Exh. SP/WMECo-2, at 5).

producers,⁷ and (3) the actual operating costs of the Cobble Mountain Hydroelectric Facility (id.; Exh. DPU-9).

WMECo asserts that its ratepayers would benefit from the Lease Agreement because (1) the agreed upon payment provisions would allow WMECo to purchase power at only 92.5 percent of the Company's peak and off peak avoided costs, which would guarantee fuel cost savings to WMECo,⁸ (2) the Cobble Mountain Hydroelectric Facility would provide environmental benefits since it utilizes an existing renewable resource, and (3) the Lease Agreement would provide system reliability benefits since the output from the Cobble Mountain Hydroelectric Facility may be used as a "black start" unit in the event of a major NEPOOL outage (Exh. DPU-10).

V. ANALYSIS AND FINDINGS

In the instant case, there are several provisions in the Lease Agreement which help ensure that the water needs and obligations of the City will be met. For example, the Lease Agreement allows the City

⁷ The Department notes that the Company's current avoided costs are 2.009 c/KWH (peak), 1.284 c/KWH (off-peak) and 1.631 c/KWH (total). See, Western Massachusetts Electric Company, D.P.U. 93-8C (1993).

⁸ The Company stated that the contract would save ratepayers approximately \$50,000 per year based on WMECo's current avoided costs (Exh. D.P.U.-10).

at all times to withdraw water from the storage reservoir in the valley of the Westfield Little River to meet the water needs of the City.

Further, the term of the Lease Agreement does not exceed thirty years.

Therefore, the Department finds that the Lease Agreement complies with the requirements of the Acts of 1928, c. 267, § 4.

With respect to the issue whether this purchase outside of a prescribed IRM solicitation process is appropriate, the Department must determine (1) whether the purchase is in the best interest of ratepayers, and (2) whether WMECo has demonstrated that the purchase could not take place within the IRM cycle. With respect to the first issue, the Department notes that the energy payment formula filed by the Petitioners is based on WMECo's avoided cost rates that are filed with the Department on a quarterly basis. The Department also notes that the payment formula includes a payment term, which, reduces the energy purchase rate to 92.5 percent of WMECo's avoided cost rate. Further, the payment formula also contains a provision indicating that the ongoing operation and maintenance expenses of the Cobble Mountain Hydroelectric Facility will be deducted from the total monthly rental payments WMECo will make to the City. Based on the consideration of these provisions, the Department finds that ratepayer benefits will be realized through the economical energy purchases at

rates below WMECo's avoided costs, and therefore, the purchase is in the best interest of ratepayers. Accordingly, the Department finds that the Lease Agreement is to the mutual advantage of both the City and WMECo's ratepayers.

In determining the second issue, the Department notes that WMECo submitted its first draft IRM filing to the Department on July 1, 1992. The parties to that proceeding submitted an offer of settlement that was accepted by the Department on October 16, 1992.⁹ See WMECo/Northeast Utilities IRM Review, D.P.U. 92-88 (1992). The evidence in the instant proceeding indicates that the prior lease between the Petitioners relative to the Cobble Mountain Hydroelectric Facility expired on November 11, 1992, which was after the Department approved WMECo's IRM Settlement. Therefore, based on the evidence in this case, the Department finds that the purchase could not have taken place within a prescribed IRM solicitation process.

VI. ORDER

Accordingly, after due notice and consideration, it is

⁹ In that case, the Department stated that continuing to litigate WMECo's IRM filing at that time would not provide any clear benefits to ratepayers. WMECo/Northeast Utilities IRM Review, D.P.U. 92-88 at 7 (1992).

ORDERED: That the joint petition of the City of Springfield and Western Massachusetts Electric Company is hereby ALLOWED; and it is

FURTHER ORDERED: That the Lease Agreement as described herein, by and between the City of Springfield and Western Massachusetts Electric Company relative to the Cobble Mountain Hydroelectric Facility is hereby APPROVED.

By Order of the Department